

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Petitioner,

v.

Case No. 08-MISC-008

CODY E. SCHAAL,

Respondent.

ORDER FOR REMEDIAL CONTEMPT

Respondent Cody E. Schaal failed to comply with an IRS summons issued pursuant to 26 U.S.C. § 7602 and was ordered to appear and show cause why he should not be ordered to comply. On June 12, 2008, the Court denied Schaal's motion to dismiss for lack of jurisdiction and ordered that he present himself before the Revenue Agent Michael Majewski on July 15, 2008, and give testimony regarding his income for the years in question. Schaal was also ordered to produce pertinent records regarding the same. On July 17, 2008, the Government filed a motion for contempt, alleging that Schaal had failed to appear before Revenue Agent Majewski on July 15 as ordered by the Court and had made no attempt to contact Agent Majewski to explain why or reschedule. The Court thereafter issued an Order To Show Cause to Schaal directing him to appear and show cause why he should not be held in contempt. The hearing on the motion was set for August 8, 2008, and the U.S. Marshal was ordered to personally serve Schaal with the Order. Although the Deputy Marshal went to Schaal's residence on several occasions, he was unable to

personally serve him, and Schaal failed to appear. Based on Deputy Amerson's affidavit of attempted service, the Court concluded that Schaal was intentionally avoiding service and issued a warrant for his arrest. The warrant was executed on August 11, 2008, and Schaal was brought before the Court on August 12, 2008, and afforded an opportunity to explain why he had failed to comply with the Court's order. Schaal offered no lawful justification for his refusal to comply with this Court's Order of June 12, 2008, but agreed that he would thereafter meet with Agent Majewski and comply with the summons and this Court's previous order. Schaal was given another date to appear at Agent Majewski's office and produce the requested documents. Schaal also provided the Court with a mailing address and assured the Court that he would appear voluntarily at future hearings regarding these matters upon notices being mailed to the address he provided.

On August 19, 2008, Schaal appeared at Agent Majewski's office but failed to produce any of the documents he promised to produce. Schaal also declined to be interviewed by Agent Majewski and instead served Agent Majewski with a state court complaint asserting a claim for trespass based on Agent Majewski's posting on Schaal's door the IRS summons authorized under 26 U.S.C. § 7602. That action has since been removed to federal court pursuant to 28 U.S.C. § 1442(a)(1). The government thereafter filed a second motion requesting that Schaal be held in contempt. A hearing on the government's motion was set for September 24, 2008, and Schaal was ordered to appear. Schaal failed to appear and another warrant was issued for his arrest. Shortly thereafter, Schaal was convicted in Oconto County Circuit Court of a traffic related offense and sentenced to thirty days. A federal detainer was lodged with the Oconto County Jail and on November 26, 2007, having completed his state sentence, Schaal was brought before this Court. Schaal failed to offer any explanation or excuse for his failure to appear, except for repeating his

assertion that the Court lacked jurisdiction over him because the action had not been properly commenced. Having previously considered and rejected Schaal's claim that the Court lacked jurisdiction over him, the Court declined to further address the matter.

Based on the proceedings held on this date and the entire record in this matter, and pursuant to this Court's authority under 18 U.S.C. § 401 and *Mine Workers v. Bagwell*, 512 U.S. 821, 826-30 (1994), the Court hereby finds Respondent Cody E. Schaal in contempt for willfully refusing to comply with this Court's Order of June 12, 2008. Schaal is to be held in custody until he complies with this Court's order, but not more than six months. Although the Court stated at the hearing that a fine of \$100 per day would be issued for the first five days, upon further consideration, the Court has decided to impose an escalating fine as follows: \$100 per day for the first 30 days; \$500 for the next thirty days; and \$1000 per day thereafter until he complies with this Court's order.

IT IS THEREFORE ORDERED that Respondent Cody E. Schaal is to be taken into custody by the United States Marshal and held in the Brown County Jail, or such other locked facility as the Marshal designates, for a period of six months, or until such time as Schaal complies with the Court's June 12 Order. In the event Schaal decides to comply with the Court's order, he shall notify the jailer, who shall, in turn, immediately contact the U.S. Marshal. Upon notification that Schaal has decided to comply with the Court's Order, the Marshal shall transport Schaal to Agent Majewski's office at the earliest opportunity, unless Agent Majewski elects to interview Schaal at the jail. In the event it becomes necessary for Schaal to retrieve documents from another location in order to comply with the Court's order, the Marshal shall accompany him and maintain custody over him until such time as he has fully complied.

IT IS FURTHER ORDERED that Schaal shall be fined \$100 per day for each day he remains in contempt for the first thirty days. Thereafter for the following thirty days, the fine shall increase to \$500 per day, after which it shall increase to \$1,000 per day until he complies with this Court's order of June 12, 2008.

Dated this 26th day of November, 2008.

s/ William C. Griesbach
William C. Griesbach
United States District Judge